



January 17, 2008

SENATE BILL No. 304

DIGEST OF SB 304 (Updated January 15, 2008 12:04 pm - DI 106)

Citations Affected: IC 10-13; IC 35-38.

Synopsis: Arrest records. Allows a sentencing court to prohibit the disclosure to a noncriminal justice organization or individual of records relating to a person's arrest if the person is acquitted of all criminal charges or the person's conviction is vacated.

Effective: July 1, 2008.

Steele

January 10, 2008, read first time and referred to Committee on Corrections, Criminal, and Civil Matters.
January 16, 2008, amended, reported favorably — Do Pass.

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SB 304—LS 6380/DI 106+



January 17, 2008

Second Regular Session 115th General Assembly (2008)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2007 Regular Session of the General Assembly.

SENATE BILL No. 304

A BILL FOR AN ACT to amend the Indiana Code concerning courts and court officers.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 10-13-3-27, AS AMENDED BY P.L.216-2007,
2 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2008]: Sec. 27. (a) Except as provided in subsection (b) **or (c)**,
4 on request, a law enforcement agency shall release a limited criminal
5 history to or allow inspection of a limited criminal history by
6 noncriminal justice organizations or individuals only if the subject of
7 the request:
8 (1) has applied for employment with a noncriminal justice
9 organization or individual;
10 (2) has applied for a license and has provided criminal history
11 data as required by law to be provided in connection with the
12 license;
13 (3) is a candidate for public office or a public official;
14 (4) is in the process of being apprehended by a law enforcement
15 agency;
16 (5) is placed under arrest for the alleged commission of a crime;
17 (6) has charged that the subject's rights have been abused

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repeatedly by criminal justice agencies;

(7) is the subject of a judicial decision or determination with respect to the setting of bond, plea bargaining, sentencing, or probation;

(8) has volunteered services that involve contact with, care of, or supervision over a child who is being placed, matched, or monitored by a social services agency or a nonprofit corporation;

(9) is currently residing in a location designated by the department of child services (established by IC 31-25-1-1) or by a juvenile court as the out-of-home placement for a child at the time the child will reside in the location;

(10) has volunteered services at a public school (as defined in IC 20-18-2-15) or nonpublic school (as defined in IC 20-18-2-12) that involve contact with, care of, or supervision over a student enrolled in the school;

(11) is being investigated for welfare fraud by an investigator of the division of family resources or a county office of family and children;

(12) is being sought by the parent locator service of the child support bureau of the department of child services;

(13) is or was required to register as a sex or violent offender under IC 11-8-8; or

(14) has been convicted of any of the following:

(A) Rape (IC 35-42-4-1), if the victim is less than eighteen (18) years of age.

(B) Criminal deviate conduct (IC 35-42-4-2), if the victim is less than eighteen (18) years of age.

(C) Child molesting (IC 35-42-4-3).

(D) Child exploitation (IC 35-42-4-4(b)).

(E) Possession of child pornography (IC 35-42-4-4(c)).

(F) Vicarious sexual gratification (IC 35-42-4-5).

(G) Child solicitation (IC 35-42-4-6).

(H) Child seduction (IC 35-42-4-7).

(I) Sexual misconduct with a minor as a felony (IC 35-42-4-9).

(J) Incest (IC 35-46-1-3), if the victim is less than eighteen (18) years of age.

However, limited criminal history information obtained from the National Crime Information Center may not be released under this section except to the extent permitted by the Attorney General of the United States.

(b) A law enforcement agency shall allow inspection of a limited criminal history by and release a limited criminal history to the

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following noncriminal justice organizations:

- (1) Federally chartered or insured banking institutions.
- (2) Officials of state and local government for any of the following purposes:
 - (A) Employment with a state or local governmental entity.
 - (B) Licensing.
- (3) Segments of the securities industry identified under 15 U.S.C. 78q(f)(2).

(c) A law enforcement agency may not release a person's limited criminal history information to a noncriminal justice organization or an individual if a court has issued an order restricting disclosure of the person's arrest records under IC 35-38-5-5.5.

~~(c)~~ **(d)** Any person who knowingly or intentionally uses limited criminal history for any purpose not specified under this section commits a Class A misdemeanor.

SECTION 2. IC 35-38-5-5.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: **Sec. 5.5. (a) If a person charged with a crime:**

- (1) is acquitted of all criminal charges; or**
- (2) is convicted of the crime and the conviction is subsequently vacated;**

the person may petition the court to restrict disclosure of the records related to the arrest to a noncriminal justice organization or an individual.

(b) A petition under subsection (a) must be verified and filed in the court of conviction.

(c) A petition under subsection (a) must be filed not earlier than:

- (1) thirty (30) days after the person is acquitted, if the person is acquitted; or**
- (2) three hundred sixty-five (365) days after:**

(A) the order vacating the person's conviction is final, if there is no appeal or the appeal is terminated before entry of an opinion or memorandum decision; or

(B) the opinion or memorandum decision vacating the person's conviction is certified.

(d) A petition under subsection (a) must set forth:

- (1) the date of the arrest;**
- (2) the charge;**
- (3) the date of conviction or acquittal;**
- (4) the date the conviction was vacated, if applicable;**
- (5) the basis on which the conviction was vacated, if applicable;**

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(6) the law enforcement agency employing the arresting officer;

(7) any other known identifying information, such as the name of the arresting officer, case number, or court cause number;

(8) the date of the petitioner's birth; and

(9) the petitioner's Social Security number.

(e) A copy of a petition under subsection (a) shall be served on the prosecuting attorney and the state central repository for records.

(f) If the prosecuting attorney wishes to oppose a petition under subsection (a), the prosecuting attorney shall, not later than thirty (30) days after the petition is filed, file a notice of opposition with the court setting forth reasons for opposing the petition. The prosecuting attorney shall attach to the notice of opposition a certified copy of any documentary evidence showing that the petitioner is not entitled to relief. A copy of the notice of opposition and copies of any documentary evidence shall be served on the petitioner in accordance with the Indiana Rules of Trial Procedure. The court may:

(1) summarily grant the petition;

(2) set the matter for hearing; or

(3) summarily deny the petition, if the court determines that:

(A) the petition is insufficient; or

(B) based on documentary evidence submitted by the prosecuting attorney, the petitioner is not entitled to have access to the petitioner's arrest records restricted.

(g) If a notice of opposition is filed under subsection (f) and the court does not summarily grant or summarily deny the petition, the court shall set the matter for a hearing.

(h) After a hearing is held under subsection (g), the court shall grant the petition, unless the petitioner is being reprosecuted on charges related to the original conviction.

(i) If the court grants a petition filed under subsection (a), the court shall order the state police department not to disclose or permit disclosure of the petitioner's limited criminal history information to a noncriminal justice organization or an individual under IC 10-13-3-27.

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COMMITTEE REPORT

Madam President: The Senate Committee on Corrections, Criminal, and Civil Matters, to which was referred Senate Bill No. 304, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 3, line 23, after "arrest" insert "**to a noncriminal justice organization or an individual**".

and when so amended that said bill do pass.

(Reference is to SB 304 as introduced.)

STEELE, Chairperson

Committee Vote: Yeas 6, Nays 0.

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